

**STATE OF MICHIGAN  
IN THE SUPREME COURT**  
Appeal from the Court of Appeals  
(Borello, P.J., and Whitbeck and K. F. Kelly, JJ.)

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v.

BOBAN TEMELKOSKI,

Defendant-Appellant.

**Supreme Court No. 150643**

Court of Appeals No. 313670

Wayne Cir. Ct. No. 94-000424-FH

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**FRIEND OF THE COURT BRIEF  
IN SUPPORT OF DEFENDANT-APPELLANT**

**On behalf of:**

- **ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS;**
- **CITIZENS ALLIANCE ON PRISONS AND PUBLIC SPENDING;**
- **HUMAN RIGHTS DEFENSE CENTER;**
- **MICHIGAN CHAPTER OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS;**
- **MICHIGAN COUNCIL ON CRIME AND DELINQUENCY;**
- **NORTHWEST INITIATIVE (ADVOCACY, RE-ENTRY, RESOURCES, OUTREACH PROGRAM);**
- **OHIO JUSTICE AND POLICY CENTER;**
- **PROFESSIONAL ADVISORY BOARD TO THE COALITION FOR A USEFUL REGISTRY,**  
**and**
- **THE SENTENCING PROJECT**

Dated: September 2, 2016

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## **IDENTITY AND INTERESTS OF THE AMICI CURIAE**<sup>1</sup>

The **Association for the Treatment of Sexual Abusers** (ATSA) is an international, interdisciplinary non-profit organization for the advancement of professional guidelines and practices in the field of sex offender treatment, research, policy, and management. ATSA is dedicated to preventing sexual abuse through effective treatment of individuals who sexually abuse or are at risk to abuse. Through research, professional education, and shared learning, ATSA promotes evidence-based policies and practices to protect the public from sexual violence. ATSA's members include many of the world's foremost researchers in the study of sexual violence as well as professionals who conduct evaluations and provide treatment services to sexual abusers and survivors of sexual abuse. Given its unique scientific expertise and mission, ATSA has a significant interest in the resolution of this case, as well as an important perspective for the Court's evaluation of public safety policies.

The **Citizens Alliance on Prisons and Public Spending** (CAPPS) is a nonprofit, nonpartisan policy and advocacy organization that works to reduce the social and economic costs of mass incarceration. Because policy choices, not crime rates, determine corrections spending, CAPPS seeks to re-examine those policies and shift resources to services proven to prevent crime, reduce recidivism, support victims, and improve the quality of life for all Michigan residents. CAPPS advocates for evidence-based strategies

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<sup>1</sup> No party's counsel authored this brief, nor did any party or party's counsel or any person other than amici contribute money for the preparation and submission of this brief.



for reducing Michigan's prisoner population and for using resources cost-effectively at all levels of the criminal justice system.

The **Human Rights Defense Center** is a nonprofit corporation headquartered in Florida that advocates and works for the human rights of, and litigates for, people held in U.S. detention facilities. It also publishes the monthly journal Prison Legal News, which has reported extensively on sex offender issues. The Center believes using sex offender registries as a means to protect the public is fundamentally flawed and has opposed their creation and use since 1990. *See* [humanrightsdefensecenter.org](http://humanrightsdefensecenter.org).

The **Michigan Chapter of the National Association of Social Workers** (NASW-MI) is an affiliate of the national NASW office, with over 6,000 members who live and work in the State of Michigan. NASW-MI advocates for professional social work practices and practitioners. The chapter teams with several allied organizations to promote causes and services that improve society, and it helps shape legislation that affects the health, welfare, and education of Michigan's residents. Its members serve as experts in many areas of social work, including areas that may be affected by this case.

NASW-MI believes the safety of survivors of sexual assault is paramount. The social work profession and NASW have a strong commitment to social justice. NASW-MI supports evidence-based practices and resource utilization that leads to the successful reentry of sex offenders and the safety of vulnerable people. NASW-MI is persuaded that residency requirements and exclusion zones lack empirical support for keeping people safe or reducing sex offender recidivism.



The **Michigan Council on Crime and Delinquency** (MCCD) is a non-profit organization whose mission is to improve the policies and systems that target the prevention and reduction of crime and delinquency. Since its establishment in 1956, MCCD has been a trailblazer in addressing the underlying causes of crime and advocating for the use of evidence-informed approaches within Michigan's juvenile and criminal justice systems. Through efforts in data-driven research, community organizing, training, and technical assistance, MCCD strives to engage and prepare Michigan citizens and leaders to collaborate for safer, healthier communities. Additionally, it works to implement and evaluate model programs and strategies that will protect the public. MCCD is committed to managing sex offenders in Michigan communities according to policies that reflect current academic research.

The **NorthWest Initiative** (NWI) is a non-profit organization working to strengthen and sustain healthy communities in certain Lansing neighborhoods. Its Advocacy, Re-entry, Resources, Outreach (ARRO) program assists probationers and parolees, as well as former offenders who are no longer under supervision. ARRO provides direct assistance to people living in Ingham, Eaton, and Clinton counties, including efforts to find housing and employment for people convicted of sex offenses. In 2014, ARRO served more than 600 clients, roughly 275 of whom were registered sex offenders. ARRO provides a supportive atmosphere for ex-offenders, prisoners, their families, and local residents to address issues of common concern. NWI-ARRO works to improve safety through activities that encourage ex-offenders to participate in the community as full-fledged citizens pro-

viding for themselves and their families. ARRO places equal importance on the welfare of all individuals, including both ex-offenders and victims.

The **Ohio Justice & Policy Center** (OJPC) is a non-profit law firm and advocacy office in Ohio. OJPC works to create fair, intelligent, redemptive criminal-justice systems through client-centered advocacy, innovative policy reform, and cross-sector community education. Statewide and nationally, OJPC has worked extensively to advocate for sex-offender management policies – and general prisoner reentry policies – that create safe and just communities. The firm also provides community education on issues of criminal justice through clinical legal education, community presentations, internships, and written legal and policy guides. OJPC is known within Ohio, and throughout the country, for its expertise in smart sex-offender management strategies and related litigation.

The **Professional Advisory Board to the Coalition for a Useful Registry** (PAB) is an organization that promotes public safety and constructive changes to sex offender laws in Michigan, to reduce the over-inclusion of juvenile and low-risk offenders. PAB strives to make the Michigan Sex Offender Registry more meaningful and useful to everyone, while promoting the ability of low-risk offenders to achieve their potential as constructive members of society. PAB is a multidisciplinary group of professionals that includes prosecutors, defense attorneys, judges, probation officers, and professionals involved in treatment of victims and offenders. *See* Professional Advisory Board list, attached as Exh. 1. The PAB also undertakes research and advocacy.

**The Sentencing Project** (TSP) is a national non-profit organization engaged in

research and advocacy for criminal justice reform. TSP publications and research have been widely cited by policymakers, practitioners, and academics. TSP staff are often invited to testify before the U.S. Congress and state legislatures. The organization is committed to sentencing and corrections reforms that promote public safety – for example, by reducing collateral consequences of convictions and by eliminating barriers to reentry that are counterproductive to individual rehabilitation and community needs.

### **Introduction**

Good public policy has three characteristics: it is rational, fair, and cost-effective. Michigan's Sex Offenders Registration Act (SORA) has none of these attributes. To the contrary, SORA is an extreme overreaction to a serious but very specific concern about child sexual predators that is largely based on myth and misconception.

Preventing sexual abuse is a compelling state interest for Michigan and is also a core interest of each amicus. But SORA does little or nothing to protect the public in general or children in particular because most of the people who must register are never going to commit another sex offense against anyone. In addition, many aspects of the registry – including the public's access to misleading information, the extensive state monitoring of registrants' daily lives, and the prohibitions on living, working, and "loitering" in vast areas of the community – have been shown by modern research to be ineffective at best or even counterproductive to SORA's goals.

Michigan's SORA is based solely on the fact of a past conviction, without any assessment of current dangerousness. The exclusion of registrants from many neighborhoods, the constant fear of incarceration for failing to meet vague and oppressive regis-

tration requirements, and the indiscriminate public shaming of registrants, undermine the ability of former offenders and their families to lead normal productive lives. The public nature of the registry also cultivates groundless fears that tens of thousands of dangerous predators are living among us, and creates a state-defined class of pariahs whose treatment can never be too harsh.

The operation of the registry comes at great public expense. Local law enforcement officials must collect and process information, monitor registrants, and prosecute those who are not in compliance. Local courts must adjudicate the charges. Local jails and state prisons must house those who are incarcerated for registry violations. The Michigan State Police must dedicate staff solely to the maintenance of the public registry. There is no proof that this investment has done *anything* to increase public safety.

A non-public registry that allows law enforcement to track those few individuals who actually present an ongoing threat to public safety might have value for investigating and possibly for preventing crime. Placement based on individualized risk assessments, using validated statistical tools and case-specific information, would be rational. Applying requirements and restrictions proven to decrease reoffending would also be rational. A process for seeking removal from the registry, as exists in some states, would be fair. Elimination of vague provisions that registrants cannot understand and law enforcement cannot enforce would also be fair. Such a registry would also be cost-effective, greatly reducing the expense of its administration and enforcement without any concomitant decrease in public safety.

## ARGUMENT

### **I. SORA IS NOT RATIONALLY RELATED TO ITS PURPOSE BECAUSE IT RESTS ON MISCONCEPTIONS AND MYTHS THAT HAVE BEEN REFUTED BY MODERN SOCIAL SCIENCE RESEARCH**

Michigan's Sex Offenders Registry Act (SORA) begins by declaring:

...The legislature has determined that a person who has been convicted of committing an offense covered by this act poses a potential serious menace and danger to the health, safety, morals, and welfare of the people, and particularly the children, of this state. The registration requirements of this act are intended to provide law enforcement and the people of this state with an appropriate, comprehensive, and effective means to monitor those persons who pose such a potential danger. MCL 28.721a.

While the intent is clear, the legislature's determination of "facts" is actually a litany of conclusions based only upon fear, assumptions, and political rhetoric. The first sentence quoted above is unsupported by *any* research *or* factual findings and is patently false. As to the second sentence, although the requirements imposed by the act are undeniably "comprehensive," they are neither appropriate nor effective.

When SORA was enacted in 1994, it was a private database for law enforcement use only that had no regular reporting requirements. This served the state's purposes adequately for more than a decade. The registry became public in 2004; geographic exclusion zones were added in 2006; sweeping additional restrictions, reporting requirements, and tier classifications took effect in 2011.

#### **A. People convicted of sex offenses present widely varied risks of re-offending, which requires individualized assessment.**

Michigan's SORA, like sex offender laws around the country, was a response to media reports about horrific but very isolated instances of children being abducted and/or

raped and murdered, beginning with Adam Walsh in 1981. The image underlying the registry is of the worst possible case – the pathological stranger who preys on children. This image is used to justify registering everyone who has ever been convicted of a sex offense, excluding them from areas where children congregate, and monitoring the daily activities of most registrants for their entire lives.

Current research, however, indicates that individuals who offend sexually are a heterogeneous group who cross all socio-economic, educational, gender, and cultural lines. Hanson & Morton-Bourgon, *Predictors of Sexual Recidivism: An Updated Meta-Analysis* (2004). They engage in different behaviors with different victims for which they have different motivations, exhibit distinct criminogenic impulses, and have widely disparate levels of risk of reoffending. *Id.* Roughly a third to a half of those who sexually abuse children are children or teenagers themselves. These offenders are highly susceptible to treatment and tend to stop their behavior as they mature. Tabachnick & Klein, Association for Treatment of Sexual Abusers, *A Reasoned Approach: Reshaping [Sex Offender] Policy to Prevent Child Sexual Abuse* (2011).

Moreover, the same statutory offense can present a broad array of factual circumstances, culpability, and actual harm. Registry schemes that group people by offense to determine how frequently they must report and how long they must stay on the registry ignore these critical distinctions.

Criminal justice experts and victims' rights advocates agree that to best protect the community, the management and treatment of former sex offenders should be based upon their individualized risk/needs, with more restrictions and more intensive services being

assigned to those people with the highest risk of reoffending. J. Bonta & D.A. Andrews, Public Safety Canada, *Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation* (2007); Hanson et al., *The Principles of Effective Correctional Treatment Also Apply to Sexual Offenders: A Meta-Analysis*, 36 Criminal Justice and Behavior 865-891 (2009); National Alliance to End Sexual Violence, *Community Management of Sex Offenders*, [http://endsexualviolence.org/where-we-stand/ community-management-of-sex-offenders](http://endsexualviolence.org/where-we-stand/community-management-of-sex-offenders).

Registrants' statistical level of risk can be determined by empirical risk-assessment tools and by assessment of individualized risk factors. *Id.* Sex offenders are most accurately assessed by empirically-based tools, not by the legal definition or seriousness of their conviction. Zgoba et al., *A Multi-State Recidivism Study Using Static-99R and Static-2002 Risk Scores and Tier Guidelines from the Adam Walsh Act* (research report submitted to the National Institute of Justice, 2012).

When risk levels, not criminal labels, determine the danger a person poses to the community, then sex offender registration can work. Fifteen states, including such large jurisdictions as California, Texas, and Georgia, have recognized the importance of individualized assessment and have made their registries risk-based rather than offense-based. *Doe v Sex Offender Registry Brd*, 473 Mass 297, 41 NE3d 1058, 1068 n 20 (Mass 2015). Such a system also avoids “overdosing” people with unneeded oversight or unneeded treatment which research shows can actually increase the risk of reoffending. Hanson et al., *supra*.



The Michigan Department of Corrections (MDOC) itself recognizes the importance of using evidenced-based practices for both treatment and supervision. For many years, the MDOC placed prisoners in treatment programs based solely on their offense. Everyone convicted of a long list of assaultive offenses was required to complete the Assaultive Offender Program (AOP), regardless of individual circumstances or risk. Everyone convicted of a sex offense was required to complete the Sex Offender Program (SOP). These across-the-board requirements led to long waiting lists. Many prisoners were denied parole at their first eligibility date solely because they could not access the required programs in time.

The MDOC has moved away from this offense-based process. It now uses risk-assessment instruments and assigns people to evidence-based programs depending on the likelihood of re-offending. Those who score low on the risk for violence are not required to complete any program unless requested by the parole board. Those who are at moderate or high risk of committing a new violent offense are placed in programs of appropriate intensity. Sex offenders, too, are assessed using both specialized statistical tools and clinical evaluations. Those who are at low risk don't have to take courses inappropriate for their needs. *See* Memorandum from MDOC Deputy Directors Finco, Sinclair, and Treacher to Correctional Facilities Administration and Field Operations Staff, *Re: Risk Based Prisoner Program Referrals-UPDATED* (June 11, 2012) (copy attached as Exh. 2). *See also* Citizens Alliance on Prisons and Public Spending, *Programs for Sex Offenders & Assaultive Offenders: An Update*, Consensus (Fall 2011), pp 16-18. Waiting lists

have declined substantially, parole delays are less frequent, and scarce resources are targeted where they will do the most to enhance public safety.

The MDOC also uses risk assessment to individualize supervision requirements for probationers and parolees. The length of supervision periods, frequency and type of reporting, and nature of conditions are now better tailored to the risks and needs of the offender and can be changed as appropriate over time. Here, too, scarce resources are targeted at those who present the highest risk to the community. *Expert Report of Richard Stapleton in Does v. Snyder*, 101 F Supp 3d 672 (ED Mich 2015), R 91-4, PgID#4775.

For sex offenders, though, SORA turns this useful policy on its head. All registrants are subject to all of SORA's vast reporting requirements and restrictions based solely on their offense. The registration period ranges from 15 years (Tier I) to 25 years (Tier II) to life (Tier III). Some of SORA's restrictions would never be imposed by the MDOC itself. And unlike short-term (typically two-year) probation and parole conditions, SORA's requirements do not decrease over time as the person successfully reintegrates into the community. Nor can registrants petition for a change of conditions or for an exception, or for early discharge or removal (but for a few exceptions). As a result, low and moderate risk registrants are presented to the community as if they are "intolerably dangerous;" they are subjected to more oversight than is practical or necessary; and registrants have far more trouble finding stable housing and employment. In short, the goals of reunifying families and building pro-social community support networks are harder to achieve because of SORA. *Id.*

The ironies are clear. The goals of the MDOC and SORA are the same: to prevent

reoffending and promote public safety. Yet where the MDOC relies on risk-based strategies that are far more likely to be effective, SORA, with its harsh, ineffectual, and undifferentiated requirements, undercuts evidence-based efforts. Instead of giving low-risk people convicted of sex offenses the chance to become productive members of society by individualizing treatment, imposing targeted supervision, and rewarding success, SORA takes away all hope. The State of Michigan's own approaches to sex offenders are at war with each other.

**B. Re-offense rates for those convicted of sex offenses are actually very low.**

High recidivism rates for sexual offenders are often cited in support of stringent restrictions. The belief that sexual offending is compulsive and incurable is so strongly ingrained that research findings to the contrary are often rejected out of hand. As Table 1 shows, however, the body of research demonstrating that sex offender recidivism rates are extremely low has been remarkably consistent over time.<sup>2</sup> Most of these studies

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<sup>2</sup> The sources for the table, in the order in which the jurisdictions are listed, are: Langan et al., *Recidivism of Sex Offenders Released from Prison in 1994*, U.S. Department of Justice, Bureau of Justice Statistics (Washington, D.C., 2003); California Sex Offender Management Board, *Recidivism of Paroled Sex Offenders – A Ten(10)Year Study* (2008); California Sex Offender Management Board, *Recidivism of Paroled Sex Offenders – A Five (5) Year Study* (2008); State of Connecticut, Office of Policy and Management, Criminal Justice Policy & Planning Division, *Recidivism Among Sex Offenders in Connecticut* (Feb. 15, 2012); Levenson and Shields, *Sex Offender Risk and Recidivism in Florida* (2012); Indiana Department of Correction, *Recidivism Rates Compared: 2005-2007* (2009) plus data for 2005 releases provided by research analyst Aaron Garner; Maine Statistical Analysis Center, USM Muskie School of Public Service, *Sexual Assault Trends and Sex Offender Recidivism in Maine* (2010); Citizens Alliance on Prisons & Public Spending, *Denying Parole at First Eligibility: How Much Public Safety Does It Actually Buy? A study of prisoner release and recidivism in Michigan* (2009) [releases from 1986-1999]; Minnesota Department of Corrections, *Sex Offender Recidivism in Minnesota* (2007); State of New York, Department of

concentrate on the first three to five years after release from prison, when re-offense rates are at their highest. *See Does v Snyder, supra*, Joint Statement of Facts, ¶¶ 341-48, R. 90, PgID# 3799-3801. Many studies have also noted that re-offense rates for sex offenders are the lowest of any offense group except homicide.<sup>3</sup>

(Table I appears on the next page so that the whole table can be viewed on one page.)

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Corrections and Community Supervision, *2010 Inmate Releases: Three Year Post Release Follow-up* [releases from 1985-2010]; Ohio Department of Rehabilitation and Correction, Bureau of Planning and Evaluation, *Ten-Year Recidivism Follow-Up of 1989 Sex Offender Releases* (2001); Barnoski, *Sex Offender Sentencing in Washington State: Recidivism Rates* (Washington State Institute for Public Policy (2005).

<sup>3</sup> Langan et al., Maine Statistical Analysis Center; Citizens Alliance on Prisons & Public Spending; State of New York; Barnoski, all at note 3, *supra*; Iowa Department of Corrections, Iowa Recidivism Report: *Prison Return Rates FY 2013* (March 2014); Kohl et al, *Massachusetts Recidivism Study: A Closer Look at Releases and Returns to Prison*, Urban Institute, Justice Policy Center (Washington, D.C., 2008); Sample and Bray, *Are Sex Offenders Dangerous?* 3 *Criminology and Public Policy*, No. 1, 59-82 (2003); Flaherty, *Recidivism in Pennsylvania State Correctional Institutions, 1997-2003*, Pennsylvania Department of Corrections (2005); Holley and Ensley, *Recidivism Report: Inmates Released from Florida Prisons, July 1995 to June 2001*, Florida Department of Corrections (2003).

Table 1: Sex Offender Recidivism Rates

<u>Study</u>	<u>Total Cases</u>	<u>New Sex Crime</u>	<u>Any New Offense</u>	<u>Years in Follow-up Period</u>	<u>Recidivism Measure</u>
Bureau of Justice Statistics	9,691	3.5%	24.0%	3	Reconviction*
California	3,577	3.4%	7.2%	10	Return to prison
California	4,204	3.2%	7.9%	5	Return to prison
Connecticut	746	2.7% 1.7%	-----	5	Reconviction Return to prison
Florida	250	13.7%	-----	10	Re-arrest
	250	5.2%	-----	5	Re-arrest
Indiana	3,615	1.9%	11.2%	3	Return to prison
Maine	341	3.8%	7.0%	3	Return to prison
Michigan	6,673	3.1%	7.5%	4	Return to prison
Minnesota	3,166	5.7% 3.2%	25.4% 8.6%	3 3	Reconviction* Return to prison
New York	21,946	1.7%	7.5%	3	Return to prison
Ohio	879	8.0%**	14.3%	10	Return to prison
Washington	4,091	2.7%	13.0%	5	Reconviction
*includes misdemeanors; **also found that 1.4% had parole violations for behavior constituting a sex offense.					

Thus the critical assumption used to justify singling out former sex offenders for extraordinarily burdensome requirements and prohibitions – that they will inevitably commit new sex offenses – is fundamentally flawed. Not only do decades of data from

multiple jurisdictions fail to support this belief, the data emphatically *disprove* it.

The reason why sex offenders are so unlikely to reoffend is not altogether clear. For many people it may well be a combination of non-recurring circumstances, guilt or shame, treatment success, and the deterrent effect of even a short prison term or public humiliation on offenders. As one research team noted:

Although the cognitive-behavioral worldview implies that all behavior follows from cognitions, a single act of sexual offending does not entail the existence of offense-supportive attitudes. Like the rest of us, sexual offenders are able to do things that are contrary to their values and moral beliefs, acts for which they feel ashamed and deeply regret.

Ruth E. Mann, Karl Hanson, and David Thornton, *Assessing Risk for Sexual Recidivism: Some Proposals on the Nature of Psychologically Meaningful Risk Factors*, Sexual Abuse: A Journal of Research and Treatment, XX(X) 1-27 at 10.

Notably, much of the research covers people who were released before registries were introduced or became public, and well before registries became so onerous. When people are convicted of a sex offense, that fact is likely to be well known to their families and communities, even without public registries. Since most offenders with child victims know, are close to, or live with the victim, the studies suggest that those responsible for protecting children can be attentive to any future risk even in the absence of state-sponsored notification laws.

**C. Recidivism risk decreases over time, making decades-long registration requirements and geographic exclusion zones pointless.**

Imposing SORA's restrictions for decades (15 or 25 years or for life) is also counterfactual and counterproductive. While low-risk offenders are consistently low-risk from

the start, the likelihood that a high-risk offender will commit a new sex crime also declines considerably over time. Hanson et al., *High Risk Sex Offenders May Not Be High Risk Forever*, 29 J of Interpersonal Violence, No. 15 (Oct. 2014); Howard, *Hazards of Different Types of Reoffending*, UK Ministry of Justice Research Series (2011); Harris & Hanson, *Sex Offender Recidivism: A Simple Question*, Report, Public Safety Canada (2003).<sup>4</sup>

The longer a sex offender remains offense-free in the community, the lower the risk of re-offending. *Id.* After enough years offense-free in the community, the likelihood that a registrant will commit a new sex offense is the same as the likelihood that an “out of the blue” sex offense will be committed by a person with no history of a sexual crime. *Id.* at 9-11; *Does v Snyder, supra*, Hanson Decl R 93, PgID#5208) and Levenson Dep R 90-10, PgID#4219. Thus, SORA’s lengthy and lifetime requirements, applied across the board, do not enhance and are not even rationally connected to, SORA’s public safety goals.

**D. Exclusion zones do not reduce sex offenses against children because most such offenses are committed in private homes by family or friends.**

Prohibiting people convicted of sex offenses from residing, working, or loitering within specified distances of schools, parks, or other areas where children congregate

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<sup>4</sup> This decrease in risk is true for all offenders, not just sex offenders: the longer any offenders remain offense-free in the community, the lower their chances of coming into contact with the justice system again. Kurlychek et al., *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 Criminology & Pub Pol 483 (2006) (finding that after 6 or 7 crime-free years, the risk of committing a new offense begins to approximate the risk of new offenses among persons with no criminal record – sometimes referred to as the “ambient risk” within the general population).



does almost nothing to serve the state's goal of protecting children because these are not the places where children are victimized: the overwhelming majority of offenses occur in a residence, typically the child's own home.

Michigan State Police statistics show 4,401 instances of first-degree criminal sexual conduct were reported in 2014. Michigan Incident Crime Reporting (MICR), 2014 CSC – First Degree, [http://www.michigan.gov/documents/msp/Annual\\_Rape\\_493235\\_7.pdf](http://www.michigan.gov/documents/msp/Annual_Rape_493235_7.pdf). One of the key characteristics that can elevate an offense involving sexual penetration to first-degree is the age of the victim, so it is not surprising that 45.2 percent of the victims were younger than 15. Nearly 80 percent of the total occurred in a residence or home. Only 1.7 percent occurred at an elementary or secondary school; only 0.6 percent occurred at a park or playground. Thus controlling former offenders' proximity to these locations cannot be expected to affect reoffending in any significant way. Moreover, research has consistently shown that reoffending is not related to the proximity of an offender's residence to schools, daycare facilities, or other youth centers. To the contrary, the location of the offense is connected to the *relationship* between offenders and victims, not to *places* where children congregate – which is why such a high percentage of child sex offenses occur in a residence or in the child's own home.

One study that focused on Michigan and Missouri was unable to reliably examine the relationship between residency restrictions and sexual reoffending because the reoccurrence rate was so low (less than 3 percent of the sample). It found, however, that any relationship that might exist between residency restrictions and overall reoffending by sex offenders is small: the effect of restrictions in Michigan was actually a slight *increase*

in recidivism, while in Missouri it was a slight decrease. Huebner et al., *An Evaluation of Sex Offender Residency Restrictions in Michigan and Missouri* (2013), at 9-10.

Numerous other studies corroborate that the location of a sex offender's residence does not influence where a crime may occur and that residency restrictions do not reduce recidivism. Agan, *Sex Offender Registries: Fear Without Function?*, 54 J L & Econ 207-239 (2011). *See also*, Nobles et al., *Effectiveness of Residence Restrictions in Preventing Sex Offense Recidivism*, 58 Crime & Delinquency 612-642 (2012) (finding that implementing residence restrictions did not decrease sex crime arrests or recidivism, "suggesting that the residence restriction did not achieve its intended goal of reducing recidivism"); Zandbergen et al., *Residential Proximity to Schools and Daycares: An Empirical Analysis of Sex Offense Recidivism*, 37 Criminal Justice and Behavior 482-502 (2010) (finding no significant relationship between reoffending and proximity to schools or daycares); Minnesota Dep't of Corr, *Residential Proximity & Sex Offense Recidivism in Minnesota 2* (2007) ("Not one of the 224 [recidivist] sex offenses [studied] would likely have been deterred by residency restrictions"); Colorado Dep't of Public Safety, Division of Criminal Justice, *Report on Safety Issues Raised by Living Arrangements for and Location of Sex Offenders in the Community* (2004) (finding no evidence that residence restrictions prevent repeat sex crimes and that residency was not linked to crime location). Even for sex offenders identified as high risk, there is no evidence that residential proximity to parks or schools plays a role in re-offending. Minnesota Dep't of Corrections, *Level Three Sex Offenders Residential Placement Issues* (2003).

**E. SORA registration and notification requirements do not reduce the number of sexual offenses because the great majority of such offenses are committed by first-time offenders known to their victims.**

The fear that drives public notification and stringent registration requirements is “stranger danger” – the image of children being abducted by unknown predators. Horrifying as such crimes are, they are also incredibly rare. Finkelhor, et al., National Center for Missing and Exploited Children, *Nonfamily Abducted Children: National Estimates and Characteristics* (2002). See also Zevitz, *Sex Offender Community Notification: Its Role in Recidivism and Offender Reintegration*, 19 *Criminal Justice Studies* 193–208 (2006), *supra* (finding that none of the recidivistic offenses in their study sample was for predatory sex crimes involving strangers). Yet tragic sexually-motivated crimes broadcast in the media provoke public alarm and emotional responses, driving legislation that may have little meaningful impact. Levenson, et al., *Public Perceptions about Sex Offenders and Community Notification Policies*, 7 *Analyses of Social Issues and Public Policy*, 1–25 (2007).

The Department of Justice found that 93 percent of child sexual abuse victims were abused by a family member or well-known acquaintance. Bureau of Justice Statistics, *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics*, 10 (2000). Moreover, the overwhelming majority of sex offenses are committed by first-time sex offenders: 95.8% of all sexual offense arrests involved first-time sex offenders, “casting doubt on the ability of laws that target repeat offenders to meaningfully reduce sexual offending.” Sandler et al., *A Time-Series Analysis of New York State’s Sex Offender Registration and Notification Law*, 14 *Psy-*

chology, Public Pol and Law 284–302 (2008) (also finding that 96% of rapes and 94% of child molestations are committed by first-time sex offenders).

Michigan State Police data reported in 2014 on first-degree criminal sexual conduct show that one-third of the offenders were family members. Many others were acquaintances, neighbors, boyfriends, etc. Only eight percent were strangers. Michigan Incident Crime Reporting, *supra*. Although the data are not broken down by age of the victim, it is apparent that a small minority of children are assaulted by strangers. On the other hand, more than 31 percent of the offenders were themselves younger than 18. *Id.*

The State Police data for third-degree criminal sexual conduct, also a Tier III offense involving penetration, show that fully two-thirds of the victims were 15 or older. Where the relationship to the victim was known, only nine percent were strangers. Thus the great majority of these Michigan sexual assault victims were not young children and were not victimized by strangers.

Multiple studies have found that public registration and notification requirements create no statistically significant reduction in recidivism – indicating these requirements neither enhance nor are rationally related to the government’s intended goal of preventing sexual abuse. While public registries were ostensibly created to assist law enforcement and to notify the community, research shows that state efforts to make offenders more visible do not necessarily promote public safety.<sup>5</sup> Zevitz, *Sex Offender Community Noti-*

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<sup>5</sup> There is evidence that registration requirements without any public notification can reduce sex crimes, and therefore limited *private* registries may be beneficial to local authorities for monitoring and apprehension purposes. Prescott & Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?* 54 J L & Econ

*fication, supra* (registries were intended to help people protect against future victimization); Association for the Treatment of Sexual Abusers, “Sex Offender Registration & Notification,” <http://www.atsa.com/sites/default/files/ppSOREgNotification.pdf> (registries were initially for private law enforcement use only, to assist law enforcement with tracking/monitoring sex offenders and apprehending potential sex crime suspects). In Iowa, for example, the recidivism rate of people on the registry (3 percent) was not statistically significantly different from the rate of sex offenders who were not required to register (and not very different from the ambient offense rate in the general population). Adkins, et al., Iowa Dep’t of Human Rights, *The Iowa Sex Offender Registry and Recidivism* (2000).

A Washington State study found no statistically significant difference in recidivism rates between offenders who were subjected to community notification and those who were not. Matson & Lieb, Washington State Institute for Public Policy, *Community Notification in Washington State: A 1996 Survey of Law Enforcement* (1996). Likewise, research on New York State’s sex offender registration and notification laws revealed no evidence that those laws reduced sexual offending by rapists, child molesters, sexual recidivists, or first-time sex offenders. Sandler, et al., *A Time-Series Analysis, supra*. Researchers also found that increasing public notification did not decrease re-arrest and

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161-206 (2011). While some potential offenders may be deterred by public notification sanctions, the imposition of community notification on convicted offenders *ex post* may make them more likely to recidivate. *Id.* at 192.

re-incarceration, undermining the alleged utility of these practices. Zevitz, *Sex Offender Community Notification*, *supra*.

By focusing on “stranger danger,” SORA steers the community’s focus away from more likely perpetrators. SORA undermines the safety of children by encouraging parents to overprotect their children from strangers instead of protecting them from known and trusted individuals who are much more likely to cause them harm.

## **II. SORA’S REQUIREMENTS HAVE DAMAGING COLLATERAL CONSEQUENCES FOR FORMER OFFENDERS, THEIR FAMILIES, AND THE COMMUNITY.**

Stability is important to preventing crime, whether by first-offenders or by those previously convicted. Having a home and a job and consistent social support reduces the likelihood that anyone will offend. For SORA registrants, re-offending may include a new sex offense, a new non-sexual offense, a failure to register or to comply with other SORA requirements, or (if they remain under MDOC supervision) a technical violation of probation or parole.

Sex offenders who get support through stable housing, family relationships, strong friendships, access to treatment, and good jobs or job prospects have significantly fewer probation violations and re-offenses than those with no support or negative support. *See, e.g.,* Colorado Dep’t of Public Safety, *Report on Safety*, *supra*; Zevitz & Farkas, U.S. Department of Justice, Office of Justice Programs, *Sex Offender Community Notification: Assessing the Impact in Wisconsin* (2000). Public policies that impede these sources of

stability and support can have the unintended consequence of undermining public safety.<sup>6</sup> *Id.* This is exactly what has occurred with SORA.

Research suggests that risk factors such as unemployment, isolation, depression, and housing instability correlate with increased recidivism for sex offenders. Sex Offender Management Board, *White Paper on Use of Residence Restrictions as a Sex Offender Management Strategy* (2009); Levenson & Cotter, *The Impact of Sex Offender Residency Restrictions: 1000 Feet from Danger or One Step from the Absurd?* 49 Int'l J of Offender Therapy and Comp Criminology 168 (2005); Colorado Dep't of Public Safety, *Report on Safety, supra*; Hanson & Morton-Bourgon, *Predictors of Sexual Recidivism, supra*; Kruttschnitt, et al., *Predictions of Desistance Among Sex Offenders: The Interactions of Formal and Informal Social Controls*, 17 Just Quarter, No. 1, 67-87 (2000).

Publication of a sex offender's identity, home address, place of work, and other identifying information can impede the offender's ability to remain offense-free in the community due to stressors (like homelessness, unemployment, shame, isolation, anxiety, and depression) that can trigger recidivism. Levenson & Cotter, *The Effects of Megan's Law on Sex Offender Reintegration*, 21 J Contemp Crim Just, 298-300 (2005); Tewksbury, *Collateral Consequences of Sex Offender Registration*, 21 J Contemp Crim Just 67-81 (2005); Human Rights Watch, *No Easy Answers, Sex Offender Laws in the U.S.*, vol. 19, no. 4(G), 62 (September 2007).

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<sup>6</sup> Among these are restrictions on Internet access, even for people who did not commit a computer crime. The Internet is a critical – and sometimes exclusive – means for finding employment and housing, completing school assignments and job requirements, and maintaining pro-social connections with family, friends, and the community.



SORA's broad and vague restrictions undermine these sources of stability, harming former offenders and their families, complicating the work of corrections and law enforcement, and damaging the community at large without any proof of compensating benefits. *See generally*, Levenson & Tewksbury, *Collateral Damage: Family Members of Registered Sex Offenders*, 34 Am J of Crim Justice 54-68, 65-66 (2009); Horowitz, *Protecting Our Kids? How Sex Offender Laws are Failing Us* (2015). The public is encouraged to fear and ostracize people who present little or no risk, instead of being taught to focus on the small number people who may actually be dangerous.

**Housing.** The ability of offenders to find stable housing is enormously reduced by exclusion zones that make large areas of most communities off-limits to registrants. Such prohibitions are further complicated by the vagueness of the laws that impose them, leaving registrants unsure where the boundaries of school property are and how to measure the required distance from them.

Exclusion zones cover vast areas, severely restricting access to employment and housing, increasing transience and homelessness, and limiting registrants' ability to engage in normal human activity. In *Does v Snyder*, 101 F Supp 3d 672 (ED Mich 2015), the plaintiffs' expert Peter Wagner produced a map showing that in Grand Rapids, MI, 46 percent of all property parcels are off limits to registrants:

## "School safety zones" in the city of Grand Rapids

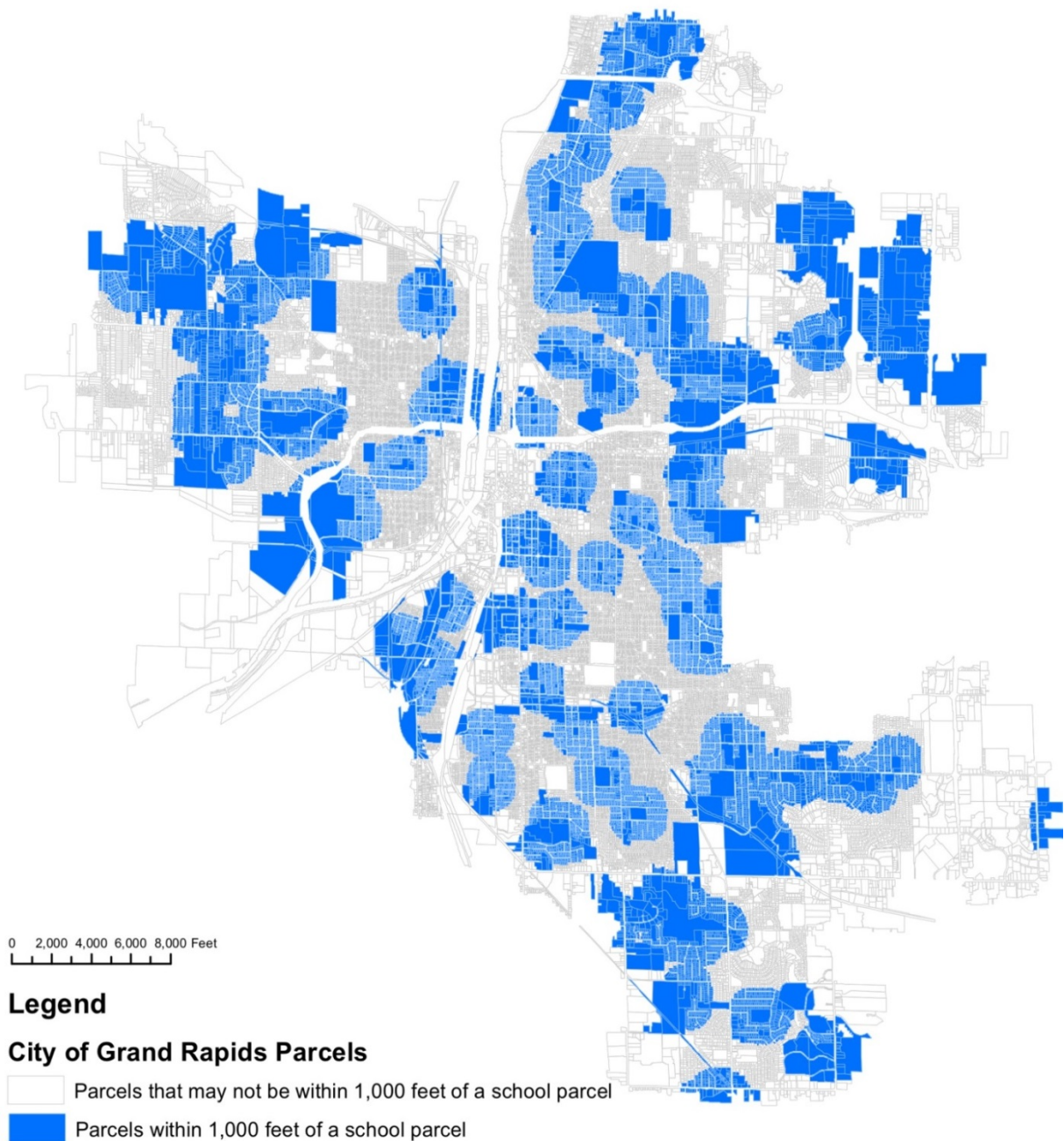
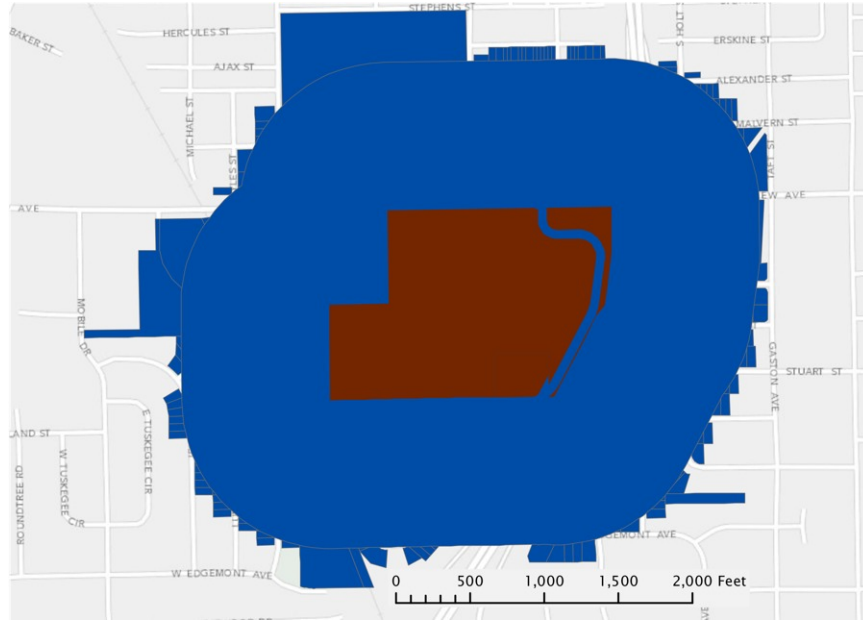


Figure 10.

*Does, supra*, R. 91-2, Wagner 2nd Report, Pg.ID#4756.







*Geographic zone measured from  
school property line to home property line.*

*Id.*, JSOF ¶398, PgID#3820-21.

Add to this the facts (1) that much of the land outside the exclusion zones may be zoned commercial as opposed to residential, and (2) that the impact of public notification reduces the availability of potential housing even outside the exclusion zones because landlords are reluctant to rent to registrants, and the enormity of the impact on registrants becomes clearer. Registrants have even been denied access to homeless shelters. *See Poe v Granholm*, 1:10-cv-318 (WD Mich 2010). The difficulty of finding suitable housing, the need to move repeatedly, and the fear of discovery by landlords and neighbors create instability, stress, and isolation not just for registrants but also for their family members and supporters. For people like Mr. Temelkoski, who have no sex offense conviction on record, the problem of finding of housing is attributable only to SORA, not to the fact of a conviction.

Residency restrictions and the vagueness with which they are defined also cause problems for corrections and law enforcement. Those charged with enforcing the registry cannot explain how to determine the boundaries of exclusion zones. The discretion to interpret SORA's meaning is ultimately left to local prosecutors. *See Does v Snyder*, 101 F Supp 3d 672, 683-684 (ED Mich 2015). Probation and parole officers cannot be sure when or if specific housing violates supervision conditions, which incorporate SORA.

The American Correctional Association, the world's largest professional organization of corrections practitioners, has concluded that residence restrictions are "contrary to good public policy" because they create "unintended consequences" that actually undermine public safety. Am Corr Ass'n, *Resolution on Neighborhood Exclusion of Predatory Sex Offenders* (Jan. 24, 2007).

**Employment.** The SORA requirements that prohibit working in exclusion zones and the public notification provisions have a similar effect on the ability of registrants to find and keep employment. No matter how well-qualified, hard-working, and unlikely they are to reoffend, registrants are excluded from jobs because of the business location or the attitudes of employers. Even willing employers are understandably reluctant to have their business address posted on the sex offender registry. Stunted employment opportunities mean that registrants' ability to support themselves and their families is reduced. Employers lose good employees. The community as a whole sees the wage-earning and tax-paying capacity of 40,000-plus members reduced.

**Social support.** The public nature of the registry makes it difficult for registrants to develop and maintain personal relationships. The families of registrants must share the



residential instability, financial impact, and public hostility. Children of registrants are particularly vulnerable to these consequences. They may have to change schools more often or live in undesirable locations. Registrant-parents are prohibited from attending their children's school activities and sporting events. Classmates may bully registrants' children, and even friendly classmates may be forbidden to visit registrants' homes. Vacations may be impossible or curtailed by SORA travel restrictions. Regardless of the nature or circumstances of the original offense, how long ago it occurred, or the low likelihood a registrant will re-offend, registrants' families live in a constant state of anxiety and hopelessness, with no end in sight.

If the damaging consequences of SORA were an unavoidable by-product of protecting children from sexual assault, they would at least arguably be justified. But since SORA's complex web of requirements and prohibitions has been shown to be ineffectual and is indiscriminately applied without regard to the actual dangerousness of registrants, that justification is lacking. The significant harm imposed on one class of citizens by the state without any proven countervailing benefit to the community is irrational, and it is public policy at its worst.

### **III. MICHIGAN'S SEX OFFENDER LAWS WASTE TAXPAYER DOLLARS AND POLICE RESOURCES, AND ARE INEFFECTIVE**

SORA not only fails the human cost/benefit analysis, it fails the fiscal one as well. Michigan expends significant resources to enforce its vague and broad SORA terms even though most registrants are at low risk for reoffending from the start, and nearly all registrants will become very low risk over time. As prominent researchers have noted:



Rather than considering all sexual offenders as continuous, lifelong threats, society will be better served when legislation and policies consider the cost/benefit break point after which resources spent tracking and supervising low-risk sexual offenders are better re-directed toward the management of high-risk sexual offenders, crime prevention, and victim services.

Harris & Hanson, *Sex Offender Recidivism*, *supra* at 12. SORA thus fails the third key measure of good public policy: it is not cost-effective.

The exact cost of operating Michigan's SORNA-compliant sex offender registry is unknown. Neither the legislature nor the State Police have studied the cost of setting up and operating the registry. *Does*, *supra*, R 90-20, Hawkins Dep, PgID# 4551. The State Police SOR unit's annual budget is about \$1.2 million, of which \$600,000 is for database support and \$600,000 is for staff, supplies, and training. *Id.*, R 90-16, Johnson Dep Pg ID#4389.

These figures do not include any of the costs imposed on local law enforcement, the court system, county jails, or the MDOC. In the eight-year period from 2006-2013, 12,460 registrants were convicted of SORA violations. Of these, 4,832 were convicted of felonies and 7,628 were convicted of misdemeanors. *Id.*, State Police SORA Conviction Data, R 91-22, PgID#4906-08. Each conviction required law enforcement resources to investigate, arrest, and prosecute. Each required judicial resources to adjudicate. Each involved punishment that used the resources of county probation offices and/or county jails and/or the MDOC.

While the number of jail beds used is unknown, in 2013 there were 257 people in prison with new felony sentences for SORA violations. MDOC, *2013 Statistical Report*, [https://www.michigan.gov/documents/corrections/2014-04-04\\_-MDOC\\_2013\\_Statis-](https://www.michigan.gov/documents/corrections/2014-04-04_-MDOC_2013_Statis-)

*tical\_Report\_-\_Vers\_1\_0\_452815\_7.pdf*. This number does not include probationers who were sentenced to prison or parolees who were returned to prison as “technical violators” for missing a SORA requirement. MDOC statistical reports do not identify technical violators by the type of violation. But MCL 28.729(5)-(7) *requires* courts to revoke the probation or HYTA status – and the parole board to revoke the parole – of registrants who “willfully” violate SORA. These mandates apply no matter how minor the violations are and regardless of whether the courts or parole board would impose incarceration on their own.

The MDOC estimates that 160 prison beds equates to a housing unit costing more than \$2.6 million annually. Citizens Alliance on Prisons and Public Spending, *10,000 Fewer Michigan Prisoners: Strategies to Reach the Goal* (2015), n 8. SORA also contributes to the difficulty and expense of providing housing stability to sex offenders re-entering the community. In sum, while the cost of SORA enforcement to cities and counties is unknown, it is apparent that the total cost runs well into the millions.

The cost of maintaining Michigan’s sex offender registry will only increase over time, as some 2,000 new registrants are added annually. *Does, supra*, R 92, Legislative Services Bureau Report on SORA 2013, PgID#5326-5337, and R 53, Total Number on SOR by Year, PgID#4959-60. Almost three-quarters of all registrants are required to register for life. *Id.*, R 92-4, Total Number of Offenders by Tier, PgID#4961-62. As the registered population ages, more and more law enforcement resources will be spent monitoring people who are further and further away from their criminal past.

If Michigan had elected not to become SORNA-compliant, it would have lost 10 percent of its Byrne Judicial Access Grant – federal money that comes to states for use by prosecutors and local law enforcement. The grant reduction would have been roughly \$1 million, based on 2011 estimates. *Id.*, R 90-20, Hawkins Dep, PgID# 4551.

Other state legislatures have studied the projected cost of SORNA compliance – including the cost to local law enforcement – and determined that the loss of 10 percent of Byrne Grant funds would be far less than the cost of complying with the Adam Walsh Act. The California Sex Offender Management Board determined that the cost of compliance would exceed \$32 million. It issued a strong statement that the “California State Legislature, Governor, and citizens should elect not to come into compliance with the Adam Walsh Act.” *Id.*, R 92-23, California AWA Position Statement, PgID#5131-35. Similarly, Texas determined that the real costs of implementing SORNA would range from \$14 million to \$25.9 million a year, which was far more than any lost Byrne Grant funds. *Id.*, R. 92-25, Texas Study, Pg.ID#5159-69. According to an analysis by the Justice Policy Institute, in all 50 states, costs for implementing SORNA exceeded the potential loss of 10 percent of the Byrne Grant funding. Michigan, specifically, would spend over \$16 million on SORNA compliance in its first year. Justice Policy Institute. *What Will It Cost States to Comply with the Sex Offender Registration and Notification Act?* [http://www.justicepolicy.org/images/upload/08-08\\_FAC\\_SORNACosts\\_JJ.pdf](http://www.justicepolicy.org/images/upload/08-08_FAC_SORNACosts_JJ.pdf).

Currently, only 17 states have implemented SORNA. Department of Justice’s Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART): <http://www.smart.gov/sorna.htm#SMARToffice>. In a survey of 27 non-imple-

menting jurisdictions, 23 reported the cost as a factor. U.S. Government Accountability Office, *Report to the Subcommittee on Crime, Terrorism, and Homeland Security, Committee on the Judiciary, House of Representatives, Sex Offender Registration and Notification Act: Jurisdictions Face Challenges to Implementing the Act, and Stakeholders Report Positive and Negative Effects* 19 (2013). Additional concerns expressed were that SORNA creates increased workload, conviction-based tiers are not a good indicator of risk, and SORNA causes “difficulties in sex offenders’ ability to reintegrate into the community.” *Id.* at 26.

Even prosecutors agree. In a strong statement, the Iowa County Attorneys Association announced that (as to residency restrictions) “there is no demonstrated protective effect ... that justifies the huge draining of scarce law enforcement resources in the effort to enforce the[m].” Iowa County Attorneys Association, *Statement on Sex Offender Residency Restrictions in Iowa* (December 11, 2006).

### **CONCLUSION**

Amici share the goal of policymakers to protect Michigan’s citizens, especially the youngest and most vulnerable, from sexual abuse. But massive social control and branding of former sex offenders is not a policy, it is a reaction justified only by unwarranted fears, myths, and misconceptions.

To pile on reporting requirements, public notification, and geographic exclusion zones, without regard to their efficacy or to the collateral harm they cause, is not only pointless but counterproductive.

The common goal is best achieved by clear, narrowly-tailored requirements that are rationally related to SORA's purpose, guided by modern research, and based upon individualized risk assessment. If we care about preventing sexual offenses and healing those already victimized, we must invest resources in public education, victim services, and offender treatment, not throw away resources on strategies that create only an illusion of safety.

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Dated: September 2, 2016

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### **Proof of Service**

On this date the above *amicus* brief, together with a motion/brief for leave to file the brief, as well as the appearance of Paul D. Reingold, were served using the Court's ECF system, which provides same-day e-mail service to all counsel of record.

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# MICHIGAN DEPARTMENT OF CORRECTIONS

*“Expecting Excellence Every Day”*

## MEMORANDUM

DATE: June 11, 2012

TO: CFA and FOA Staff

FROM: Thomas Finco, Deputy Director, Correctional Facilities Administration  
Charles Sinclair, Deputy Director, Field Operations Administration  
Randall Treacher, Deputy Director, Operations Support Administration

SUBJECT: Risk Based Prisoner Program Referrals-UPDATED

Recently the Michigan Department of Corrections (MDOC) made the decision to transition from the Assaultive Offender Program (AOP) to the Violence Prevention Program (VPP), which is delivered by CFA staff. The first phase of VPP has begun, and prisoners will no longer be placed into AOP, with the exception of WHV, the youth population, and the Residential Treatment Program (RTP). Due to the recent changes related to the discontinuation of AOP, this memo has been updated.

This memorandum outlines the interim process for creating and maintaining risk-based program referrals until Violence Prevention Programming is fully implemented statewide and the Sex Offender Programming (SOP) Redesign has been completed.

As of the effective date of this memorandum, prisoners shall be provided programming based on the results of a validated risk assessment (COMPAS, VASOR, Static-99R) and additional referral criteria. Prisoners included in this process must be past or within 12 months of their Earliest Release Date (ERD). This process does not apply to prisoners with a positive parole action or those already enrolled in programming.

Eligible prisoners must be either: currently on (or are eligible for placement on) the list for VPP or currently on (or eligible for placement on) the list for SOP. This process applies only to the male prisoners within the MDOC.

For purposes of addressing this limited population of VPP/SOP wait list prisoners, Correctional Facilities Administration (CFA) Operations and Operations Support Administration (OSA) staff will refer appropriate prisoners for placement in programming in accordance with the criteria outlined in this memo.

The Residential Sex Offender Program (RSOP) is currently available only as a community-based program and will be arranged by Field Operations Administration (FOA) pursuant to the appropriate special condition of parole as ordered by the Parole Board.



### **Violent Offender Programming**

Eligibility for VPP is based on the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) Violence Risk score and Adult Convictions of General Violence. The existing AOP waitlist will be screened and triaged by CFA-Office of Offender Reentry (CFA/OOR) using the VPP referral criteria. Prisoners who meet criteria for VPP Moderate, all security levels, and are past or within one year of ERD will be referred to Thinking for Change (T4C) delivered by certified CFA staff. Prisoners that meet criteria for VPP Moderate, all security levels, and have an ERD greater than one year will be referred to VPP Moderate. Prisoners who meet criteria for VPP High, all security levels, and all ERD's will be referred to VPP High. See attachment A: Prisoner Program Grid. All prisoners who are currently enrolled in AOP will remain in that program until completion of the group.

### **Sex Offender Programming**

Program criteria for the sex offender population is based on the Vermont Assessment of Sex Offender Risk (VASOR), STATIC-99R and COMPAS assessment tools. Prisoners with a Low VASOR Reoffense score, Low STATIC-99R score, and a Low, Moderate, or High COMPAS Violence Risk score will receive a Psychological Evaluation. Prisoners with a Moderate or High VASOR Reoffense score will receive the SOP 6 month program. See attachment A: Prisoner Program Grid.

Master level clinicians shall administer the STATIC-99R on those prisoners with a Low VASOR Reoffense score, those without a VASOR, or a VASOR that could not be scored. Assessments are also administered to prisoners who have already completed SOP as part of the Administrative Rule that indicates all sex offenders shall have a psychological evaluation. If the STATIC-99R results in a moderate or high score, the prisoner will be placed in the SOP 6 month program. Prisoners who are not currently serving for crimes included on the SOP sex offender crimes list, but who engaged in behavior during one or more of their instant offenses which closely approximated behaviors described in the listed crimes, shall be recommended for assessment.

Facility staff must review program requirements documented in the Offender Management Network Information System (OMNI/RGC tab) for every prisoner upon arrival into the facility. The OMNI/RGC tab shall contain the program recommendations, enrollments, and terminations for T4C, VPP, and SOP. Existing VPP, AOP, and SOP referrals in OMNI that are being replaced by the risk based programming will be removed from the waiting list and documented as such in OMNI by CFA/OOR.

A prisoner who begins, but does not complete an assigned program shall be reassessed for possible re-enrollment into the appropriate program within 90 days of becoming available to again participate. Prisoners who have been assessed, but not admitted into programming and those who voluntarily terminate from the SO program are to be informed they may request reconsideration. However, such a request for reassessment or readmission must be in writing (prisoner may need assistance) and must clearly indicate what has changed since the prisoner was last assessed or terminated, which now makes him/her suitable for SOP admission. These

written requests will be documented in the medical record with a notation showing date of review, reviewer, and whether or not the prisoner was placed back on the program waiting list.

Any staff or Parole Board member may refer any prisoner who is considered to be at significant risk of criminal sexual conduct to be administered a SOP assessment. The Parole Board may also refer prisoners serving life sentences to be assessed. Mental health staff will conduct file reviews and/or interviews with such prisoners as needed, and place those prisoners determined to be suitable for SOP assessment on the waiting list with the approval of the Regional Mental Health Director. Prisoners placed back on the waiting lists shall be reconsidered by their risk, need and Earliest Release Date (ERD). When the request derives from the Parole Board, the Parole Board shall be notified of the decision.

### **Programming Identification and Documentation**

Designated CFA/OSA staff shall identify the VPP and SOP waitlist prisoners who meet the criteria for risk based programming and CFA/OSA will enter the referral in the OMNI RGC tab screen for the appropriate program in accordance with this memorandum.

When the prisoner arrives at the receiving facility, designated facility staff shall check the OMNI RGC tab screen for program recommendations to determine which program is required to be completed and ensure that the program facilitator is notified of new program referrals. Dates of enrollment and termination shall be recorded into the OMNI RGC tab by either the program facilitator or other designated facility staff. SOP referrals will continue to derive from Central Office Health Care and will be documented in OMNI RGC tab after July 15, 2012. Prior to that date, all SOP referrals will be documented in the CMIS SAU screen.

Designated facility staff shall track prisoner progress and monitor program enrollments and terminations by updating the OMNI RGC tracking tab with termination date(s), and reason for termination, noting unsatisfactory completions. Staff shall make the appropriate OMNI documentation within one business day of receipt information from the service provider, program facilitator, or mental health staff. When appropriate, OMNI Case Notes may be used and program outcomes must be documented in either a discharge summary or termination report. If the prisoner is past or within 6 months of their ERD, the discharge summary report must be forwarded to the Parole Board Psych mailbox at [Parole-Board-Psych@michigan.gov](mailto:Parole-Board-Psych@michigan.gov). For all other prisoners, facility staff must ensure copies of the discharge summary report are placed in the Central Office, Institutional Records Office, Counselor files and Prisoner.

CFA Quality Assurance staff shall periodically review a random sample of program referrals to ensure the OMNI RGC tab is being appropriately maintained and take appropriate action to correct the data and staff processes as needed.

For cases which do not otherwise meet the above program criteria, and are believed by Parole Board staff to be in need of programming, a program placement override request may be initiated. The written request must include the specific program requested and justification for the request. The request must then be approved by the Parole Board Chair, and sent to the BHCS Planning Manager for placement in SOP or to the CFA Programs' Manager for override

placement into VPP or T4C. The Parole Board shall be notified of the decision.

BHCS Central Office staff will continue their current practice for SOP program referrals, monitoring, and tracking in the CMIS SAU Screen and then OMNI RGC tab after July 15, 2012. Mental Health Services staff shall forward requests for new groups to the BHCS Central Office Planning Manager. The BHCS Central Office SOP Planning Manager shall process requests for new groups and forward the requests to CFA Classification as necessary.

If you have any questions, please contact Anthony McCloud, Offender Reentry Manager.

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